

**REMARKS/ARGUMENTS**

This Amendment is being filed in response to the Final Office Action dated August 5, 2008. Reconsideration and allowance of the application in view of the amendments provided above and the remarks to follow are respectfully requested.

Claims 1-10 are pending in the Application. Claims 8-9 are added by this amendment. By means of the present amendment, claims 1-8 are amended including for better conformance to U.S. practice, such as deleting reference numerals typically used in European practice that are known to not limit the scope of the claims. Further amendments include changing "characterized in that" to -- wherein--, and amending dependent claims to begin with "The" as opposed to "A". By these amendments, claims 1-8 are not amended to address issues of patentability and Applicant respectfully reserves all rights under the Doctrine of Equivalents. Applicant furthermore reserves the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

In the Final Office Action, claims 1-8 are rejected under 35 U.S.C. §103(a) as allegedly obvious over U.S. Patent Publication No. 2002/0054983 to Nishihara ("Nishihara") in view of U.S. Patent

Publication No 2002/0160306 to Hanaoka ("Hanaoka"). It is respectfully submitted that claims 1-10 are allowable over Nishihara in view of Hanaoka for at least the following reasons.

Nishihara shows a dual recording layer medium 22 having first and second recording layers 5, 14 (see, Nishihara, FIG. 1 and paragraphs [0055] - [0057]). Nishihara is clear that "[t]he second recording layer 14 is formed of a different material from that of the first recording medium." (See, Nishihara, paragraph [0070].) The optical data storage medium of claim 1 is not anticipated or made obvious by the teachings of Nishihara in view of Hanaoka. For example, Nishihara in view of Hanaoka does not disclose or suggest, an optical data storage medium that amongst other patentable elements, comprises (illustrative emphasis provided) "a first recording stack  $L_0$  comprising a first phase-change type recording layer, said first recording stack being present at a position most remote from the entrance face, at least one further recording stack  $L_n$ , which comprises a further phase-change type recording layer, being present closer to the entrance face than the first recording stack, a transparent spacer layer between the recording stacks, said transparent spacer layer having a thickness larger than the depth of focus of the focused laser-light beam, wherein the further

recording layer is substantially of an alloy defined by the formula  $\text{Ge}_x\text{Sb}_y\text{Te}_z$  in atomic percentages, where  $0 < x < 15$ ,  $50 < y < 80$ ,  $10 < z < 30$  and  $x+y+z=100$  with a thickness selected from the range of 4 to 12 nm and that at least one transparent crystallization promoting layer having a thickness smaller than 5 nm is present in contact with the further recording layer, wherein the first recording stack and the further recording stack have the same atomic percentages of compounds" as recited in claim 1. Nishihara is clear in teaching that the two recording layers are formed from different materials and accordingly, teaches away from the recording stacks having the same atomic percentages of compounds as recited in claim 1.

Based on the foregoing, the Applicant respectfully submits that independent claim 1 is patentable over Nishihara in view of Hanaoka and notice to this effect is earnestly solicited. Claims 2-10 respectively depends from claim 1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration and allowance of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the

foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

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October 6, 2008

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